

State of California
Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, California 94105

INITIAL STATEMENT OF REASONS

**File No. RH-398
May 14, 2001**

PUBLIC INSPECTION AND PUBLICATION OF EXAMINATIONS

INTRODUCTION

California Insurance Commissioner Harry W. Low proposes the adoption of Title 10, Chapter 5, Subchapter 7.5, Article 2, Section 2695.30, California of Regulations (CCR), regarding the form and length required by statute to be provided for comments submitted by insurers relating to the Insurance Commissioner's adopted reports of examinations of unfair or deceptive practices in the business of insurance. At the same time, the Commissioner proposes to rename Subchapter 7.5 (now entitled the "Fair Claims Settlement Practices Regulations") "Unfair or Deceptive Acts or Practices in the Business of Insurance" and to place Sections 2695.1 through 2695.17 in a new Article 1 (of Subchapter 7.5) and name those sections "Fair Claims Settlement Practices Regulations."

The purpose of these regulations is to implement, interpret, and make specific the provisions of California Insurance Code (CIC), Division 3, Chapter 2, Article 1, Section 12938.

CIC §734.1 sets forth procedures that must be followed by the Department of Insurance relating to reports of examinations of insurers. The section establishes, in pertinent part, requirements and timelines for completion of the examination report; transmission of the report to the insurer for response; the insurer's submissions or rebuttals to the report; and the Commissioner's adoption of the report.

CIC §12938 (Senate Bill No. 1805, Chapter 997 (1999-2000 session), Section 2) requires the Department to make various documents available for public inspection, including by publication on its website. The section also provides that, of the documents to be published, the report of market conduct examination must be transmitted to the examined insurer upon its adoption by the Commissioner, that the insurer then has 10 business days in which to submit comments to the Commissioner relating to the adopted report, and that, within 10 business days after transmittal of the adopted report, the Commissioner publish on the Department's website both the adopted report and any comments received thereto, unless a court of competent jurisdiction has stayed the publication of the report.

CIC §12938(b) requires the Commissioner to provide by regulation the form and length of the insurer's comments relating to the adopted report. This regulation is intended to comply with that statutory mandate.

The specific purpose of the proposed action and the rationale for the determination that this action is reasonably necessary to carry out the purpose for which it is proposed are set forth below.

Section 2695.30. Comments of Examined Insurers Relating to Adopted Examination Reports.

The specific purpose of the adoption is to satisfy the statutory mandate to the Commissioner to provide form and length standards for comments that an examined insurer may wish to submit to the Commissioner relating to an adopted report of examination.

When a report of examination is first completed and verified pursuant to CIC §734.1(a), and transmitted to the examined insurer, the insurer is not constrained by form or length as to its written response to that report. Neither the verified report nor its written response is required by statute to be published.

When, however, the Commissioner has fully considered and reviewed the verified examination report, the insurer's written response, and the examiner's workpapers, the Commissioner then must either adopt the report as filed or with modifications or corrections, or reject the report with further directions to the examiners. (CIC §734.1(b).) If the Commissioner adopts the report either as written, or as modified or corrected, the adopted report must then be transmitted to the insurer for comment and must be published within 10 business days, together with any comments submitted by the insurer to the adopted report. (CIC §12938(b).)

Prior to enactment of CIC §12938, the Commissioner was not required to transmit an adopted examination report to an insurer, to accept its comments to an adopted report, or to publish either. Now, the Commissioner must do all of these things, and must publish adopted reports quickly after adoption, with or without comments from the examined insurers.

The Legislature has determined that an examined insurer's comments to the adopted examination report must be in a form and length to be predetermined by regulation, and not to be left to the complete discretion of the insurer. It is necessary for the Commissioner to adopt this regulation in order to fulfill that legislative mandate. More specifically, the regulation is necessary for the following reasons:

Section 2695.30(a)

Comments are required to be typewritten or printed for purposes of legibility. They are required to be submitted also in electronic form for ease of posting on the Department's website pursuant to statute. Faxed submissions are unacceptable because of the unreliable quality of faxed documents.

Section 2695.30(a)(1)

"Plain English" is required for the comments, to fulfill the obvious intent of the Legislature that the comments be accessible, not only electronically but also conceptually, to the public via the Department's website. Also, limiting the comments to those directly relating to the adopted examination report furthers the Legislature's intent, as it will obviate the public's having to wade

through voluminous pages of questionably relevant material to get to those comments more clearly directed to the report.

Section 2695.30(a)(2)

Letterhead or similar identifying information is required for authentication purposes.

Section 2695.30(a)(3), (4)

Standards for the size, color and quality of the paper and typeface are specific, as are the requirements for the number of sides of the paper used, line spacing, margin sizes and page numbering. These requirements promote a standardized appearance for the comments and consequently for the Department's comment website pages.

Section 2695.30(a)(5)

Size limitations are in place to promote concise comments that are to the point, that is, directed to the adopted examination report. The Department's resources are limited; there should not be a need for excessive time and effort to be put into posting comments on the web. More important, it is doubtful that the Legislature intended the public to have to wade through voluminous pages of questionably relevant material to get to comments that are more clearly directed to the report.

MANDATE OF SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES, EQUIPMENT

The regulations mandate the use of computer technology in the maintenance and transmission of records on request of the Commissioner. This technology is part of the standard operating procedures of the insurance industry; thus, this mandate would not be burdensome to the industry. The imposition of performance standards was considered and rejected as an alternative.

ALTERNATIVES

The Department has determined that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.